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Attorneys for Defendants  
TIN INC., dba TEMPLE-INLAND and  
TEMPLE-INLAND, INC.

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In re:  
  
CIMINO BROKERAGE COMPANY dba  
CIMINO BROTHERS PRODUCE,  
  
Debtor.

Case No. 09-60291 ASW 7

Chapter 7 Case

CIMINO BROKERAGE COMPANY dba  
CIMINO BROTHERS PRODUCE,  
  
Plaintiff,

Adversary Proceeding No. 10-5348 ASW

JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT

v.

TIN INC., dba TEMPLE-INLAND and  
TEMPLE-INLAND INC.,  
  
Defendants.

DATE: November 18, 2011  
TIME: 3:00 p.m.  
LOCATION: Judge Arthur S. Weissbrodt  
280 South First Street  
Courtroom 3020  
San Jose, California 95113

COMES NOW TIN INC. dba TEMPLE-INLAND and TEMPLE-INLAND INC.  
("TIN" or "Defendant"), together with CIMINO BROKERAGE COMPANY dba CIMINO  
BROTHERS PRODUCE, ("Cimino" or "Plaintiff"), and submits the following Joint Case  
Management Conference Statement:

**A. Background**

This Court originally set the Telephonic Case Management Conference, ("CMC"),  
in this case for February 4, 2011. (Docket No. 2, entered Oct. 4, 2010.) On January 21, 2011, this

1 Court entered its Order Approving Stipulation to Continue Telephonic Case Management  
2 Conference to March 4, 2011. (Docket No. 11, filed Jan. 19, 2011; Docket No. 13, entered Jan.  
3 21, 2011.)

4 On February 1, 2011, the parties appeared before this Court with regard to TIN  
5 INC.'s Motion to Dismiss, or in the Alternative, Motion for Abstention, or in the Alternative,  
6 Motion to Transfer Venue, (the "Motion"). (Docket No. 7, filed Dec. 8, 2010.) The matter was  
7 continued until after the United States Supreme Court issued its *Stern v. Marshall* decision. (See  
8 Docket No. 22, filed Feb. 25, 2011.) On June 23, 2011, the United States Supreme Court issues  
9 its *Stern v. Marshall* decision. 564 U.S. \_\_\_, 131 S. Ct. 2594, 180 L. Ed. 2d 475. On July 1, 2011,  
10 the Court entered an Order Setting Briefing Schedule Re Motion to Dismiss, with a hearing to be  
11 held on September 26, 2011, at 3:00 p.m. (Docket No. 24, entered July 1, 2011.) On July 19,  
12 2011, this Court issued its Order Continuing Case Management Conference to September 26,  
13 2011, at 3:00 p.m. (Docket No. 26, entered July 19, 2011.)

14 In compliance with this Court's briefing schedule, on August 8, 2011, TIN filed its  
15 Supplemental Brief in Support of TIN's Motion. (Docket No. 28, filed Aug. 1, 2011.) On August  
16 30, 2011, the Plaintiff filed its Supplemental Brief in Opposition to TIN's Motion. (Docket No.  
17 29, filed Aug. 30, 2011.) On September 9, 2011, TIN filed its Reply to Plaintiff's Supplemental  
18 Brief in Opposition to TIN's Motion. (Docket No. 31, filed Sept. 9, 2011.)

19 On September 15, 2011, Plaintiff's counsel filed Motion of Levene, Neale,  
20 Bender, Yoo & Brill, LLP, for an Order Authorizing Withdrawal of Counsel, ("Motion to  
21 Withdraw"). (Docket No. 32, filed Sept. 15, 2011.)

22 On September 16, 2011, the Defendant and the Plaintiff filed a Joint Case  
23 Management Conference Statement. (Docket No. 34, filed Sept. 16, 2011.) On September 22,  
24 2011, the Defendant and Plaintiff filed a Stipulation to Continue Hearing on Motion to Dismiss,  
25 or in the Alternative, Motion for Abstention, or in the Alternative, Motion to Transfer Venue and  
26 the Status Conference, (the "Stipulation to Continue"), to allow Plaintiff to determine its options  
27 in light of the Motion to Withdraw, and, upon conversion, to give a Chapter 7 trustee an  
28 opportunity to review the matter. (Docket No. 35, filed Sept. 22, 2011.) On September 23, 2011,

1 this Court entered its Order Granting the Stipulation to Continue, and continued the September  
2 26, 2011, hearing to November 18, 2011, at 3:00 p.m. (Docket No. 37, entered Sept. 23, 2011.)

3 On October 26, 2011, this Court entered its Order grating the Motion to Withdraw.  
4 (Docket No. 42, entered Oct. 26, 2011.)

5 On October 31, 2011, this Court entered an Order Converting Chapter 11 Case to  
6 Chapter 7. (Case No. 09-60291, Docket No. 304, entered Oct. 31, 2011.) On or about November  
7 3, 2011, Marc Del Piero was appointed as Chapter 7 Trustee, (the "Trustee"). (See Case No. 09-  
8 60291, Docket No. 306, entered Nov. 3, 2011, (Notice of Chapter 7 Bankruptcy Case).)

9 On November 7, 2011, Plaintiff's Texas state court co-counsel, filed Motion of  
10 Person, Whitworth, Borchers & Morales, LLP, ("PWBM"), for an Order Authorizing Withdrawal  
11 as Counsel. (Docket No. 44, filed Nov. 7, 2011.)

12 **B. Counsel has Conferred**

13 Counsel conferred on November 9, 2011.

14 **C. Proposed Course of Action**

15 On October 26, 2011, this Court entered its Order grating Plaintiff's counsel's  
16 Motion to Withdraw. (Docket No. 42, entered Oct. 26, 2011.) This case converted to Chapter 7 on  
17 October 31, 2011. Defendant's counsel spoke to the Trustee's office on November 9, 2011; his  
18 office indicated that he was not prepared to address this adversary proceeding. Later that day, the  
19 Trustee filed an application to employ Stromsheim & Associates as counsel. (Case No. 09-60291,  
20 Docket No. 308, filed Nov. 9, 2011.) Defendant's counsel spoke to proposed counsel whereby  
21 proposed counsel confirmed that the Trustee had not formulated a position regarding the case.

22 Plaintiff's counsel of record, PWBM, requests that the CMC and the hearing on  
23 the Motion be continued for 30 days in light of PWBM's Motion for an Order Authorizing  
24 Withdrawal as Counsel, (see Docket No. 44, filed Nov. 7, 2011), and to allow time for the  
25 Chapter 7 Trustee to review the case. PWBM requested on November 9, 2011, that TIN stipulate  
26 to continue the November 18, 2011, CMC and the Motion; however, counsel for TIN has been  
27 unable to communicate with its client regarding the request and has no present authority to  
28 consent.

1           TIN proposes that the Motion be heard on November 18, 2011, as scheduled, and  
2 the November 18, 2011, CMC be continued until thirty (30) days after this Court's order  
3 disposing of the Motion becomes final, or as soon thereafter as counsel may be heard. The  
4 November 18, 2011, CMC is set in coordination with the post-*Stern v. Marshall* briefing required  
5 by this Court's July 1, 2011, Order Setting Briefing Schedule Re Motion to Dismiss. (Docket No.  
6 24, entered July 1, 2011.)

7           Due to the unique circumstances of this case, the pending Motion and the  
8 Supplemental Briefing re: *Stern v. Marshall*, a response to the following information requested by  
9 this Court in its Order Setting Telephonic Case Management Conference in San Jose (Docket No.  
10 2, entered Oct. 4, 2010) is premature, at this time: a concise statement summarizing each legal  
11 theory on which the plaintiff or defendant relies and a brief general statement of the facts which  
12 support this theory; the position of the parties with respect to Bankruptcy Rules 7008 and  
13 7012(b); proposed discovery and proposed cut-off dates for discovery and pre-trial motions; and  
14 the estimated time for trial and desired trial date.

15           Once this Court adjudicates the pending Motion, the parties will be prepared to  
16 discuss how they wish to proceed in this matter.

17           **D.     Whether alternative dispute resolution is desired by the parties**

18           At this time, dispute resolution is not desired.

19           **E.     A statement by any non-governmental corporate party to this**  
20                      **action identifying all its parent corporations and listing any**  
21                      **publicly-held company that owns 10% or more of the party's stock.**

22           Temple-Inland, Inc. is the holding company for TIN INC. d/b/a Temple-Inland.  
23 TIN is not a publicly traded company.

24           Dated: November 10, 2011

TIEMSTRA LAW GROUP, PC

26           By: 

LISA LENHERR  
Attorneys for Defendants  
TIN INC., dba TEMPLE-INLAND and  
TEMPLE-INLAND, INC.

1 Dated: November 10, 2011

PERSON, WHITWORTH, BORCHERS &  
MORALES, LLP

2  
3 By: Doanh T. Nguyen w/p. Doanh  
4 DOANH "ZONE" T. NGUYEN Walker  
5 Attorneys for Plaintiff  
6 CIMINO BROKERAGE COMPANY dba  
7 CIMINO BROTHERS PRODUCE.  
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